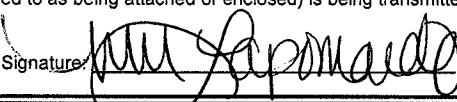


Docket No.: B0801.70256US01
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gerald B. Pier
Serial No.: 10/712,391
Confirmation No.: 8225
Filed: November 12, 2003
For: METHODS AND PRODUCTS FOR TREATING
STAPHYLOCOCCAL INFECTIONS
Examiner: C.L. Fronda
Art Unit: 1652

Certificate of Electronic Filing Under 37 CFR 1.8	
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).	
Dated: <u>February 24, 2010</u>	Signature:  (Nicole Millette Lapomardo)

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705

Dear Sir:

In accordance with 37 CFR §1.705(b), Applicant requests reconsideration of the patent term adjustment (“PTA”) for U.S. Application No. 10/712,391 (“the ’391 Application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTA and the bases under 37 CFR §1.702 for the adjustment, the relevant dates for which adjustment is sought, and the adjustment to which the patent is entitled.

1. On November 24, 2009, the U.S. Patent and Trademark Office (“USPTO”) mailed a Notice of Allowance and Determination of Patent Term Adjustment (Exhibit 1) which indicated that the ’391 Application was entitled to a PTA of 84 days.

2. According to the Patent Term Adjustments page (Exhibit 2) of the Patent Application Information Retrieval (PAIR) system, the USPTO accorded the '391 Application a PTA of 519 days for delays that occurred at the USPTO, but reduced the PTA to 84 days because Applicant had allegedly incurred 435 days of delay.

3. Applicant submits that the correct PTA should be 542 days, which is the net USPTO delay of 977 days minus the apparent net Applicant delay of 435 days.

4. The difference between what Applicant submits is the correct PTA (542 days) and what the Notice of Allowance and Determination of Patent Term Adjustment states is the PTA (84 days) results from the USPTO's failure to issue the '391 Application within three years of its actual filing date, i.e. by November 12, 2006. *See* 35 U.S.C. § 154(b)(1)(B). The USPTO has not included this delay in its calculation of the PTA shown in the PAIR system.

5. Although the issue date of the '391 Application is unknown, Applicant filed a Request for Continued Examination (RCE) on February 14, 2008, which resulted in an exclusion of time from that date forward. *See* 35 U.S.C. § 154(b)(1)(B)(i). The period of delay thus began on the first day following the three-year period, November 13, 2006, ended on February 14, 2008, and resulted in a USPTO delay of 458 days.

6. The net USPTO delay of 977 days is the sum of the delay for failure to issue the '391 Application within the 3-year period (458 days) and the USPTO delay periods shown in PAIR (519 days) minus the number of days these periods overlap on the calendar (2 days). *See Wyeth v. Dudas*, 580 F. Supp. 2d at 138, 141 (D.D.C. 2008) (holding that the "only way that periods of time can 'overlap' is if they occur on the same day"). The period of overlap occurred from July 20, 2006 through to July 21, 2006 (2 days).


7. A terminal disclaimer was not filed in this case and the '391 Application is not subject to a terminal disclaimer.

Conclusion

Based on the foregoing, Applicant respectfully submits that the correct PTA should be 542 days and not 84 days as listed in the Notice of Allowance and Determination of Patent Term Adjustment. The 542 days of PTA results from the USPTO's failure to issue the '391 Application within 3 years of its filing date.

The USPTO has indicated that a fee is not due for any requests for PTA recalculation based on a Wyeth delay. Accordingly, Applicant is not submitting herewith the required fee of \$200.00, as set forth in 37 CFR § 1.18(e). However, if such fee is considered due or if any additional fee is considered due, please charge such fee(s) to Deposit Account No. 23/2825.

Respectfully submitted,



Maria A. Trevisan
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Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2206
617.646.8000

Date: February 24, 2010
x02.24.10



Exhibit 1
UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,391	11/12/2003	Gerald B. Pier	B0801.70256US01	8225

7590

11/24/2009

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600 Atlantic Avenue
Boston, MA 02210

EXAMINER

FRONDA, CHRISTIAN L

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 11/24/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 84 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 84 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Exhibit 2

10/712,391	NUCLEIC ACID MOLECULES FOR ENHANCED PRODUCTION OF A BACTERIAL POLYSACCHARIDE AND METHODS OF USE THEREOF	02-24-2010::18:15:12
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/712,391

Filing or 371(c) Date:	11-12-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	84
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
11-24-2009	Mail Notice of Allowance		
11-21-2009	Document Verification		
11-21-2009	Notice of Allowance Data Verification Completed		
11-21-2009	Examiner's Amendment Communication		
03-18-2009	Information Disclosure Statement (IDS) Filed		
03-18-2009	Information Disclosure Statement considered		
08-04-2009	Information Disclosure Statement considered		
01-07-2009	Information Disclosure Statement (IDS) Filed		63
08-04-2009	Reference capture on IDS		↑
08-04-2009	Information Disclosure Statement (IDS) Filed		↑
08-29-2009	Date Forwarded to Examiner		↑
08-04-2009	Response after Non-Final Action		92
08-04-2009	Request for Extension of Time - Granted		↑
08-04-2009	Information Disclosure Statement (IDS) Filed		↑
03-18-2009	Information Disclosure Statement (IDS) Filed		↑
02-04-2009	Mail Non-Final Rejection		↑
02-02-2009	Non-Final Rejection		
01-07-2009	Information Disclosure Statement considered		
01-07-2009	Information Disclosure Statement (IDS) Filed		
11-25-2008	Date Forwarded to Examiner		
11-05-2008	Response after Non-Final Action		91
11-05-2008	Request for Extension of Time - Granted		↑
05-06-2008	Mail Non-Final Rejection		↑
04-28-2008	Non-Final Rejection		
02-14-2008	Information Disclosure Statement considered		
02-14-2008	Reference capture on IDS		
02-14-2008	Information Disclosure Statement (IDS) Filed		
02-25-2008	Date Forwarded to Examiner		
02-25-2008	Date Forwarded to Examiner		
02-14-2008	Request for Continued Examination (RCE)		97
02-25-2008	Disposal for a RCE / CPA / R129		↑

02-14-2008	Request for Extension of Time - Granted	↑
02-14-2008	Information Disclosure Statement (IDS) Filed	↑
02-14-2008	Workflow - Request for RCE - Begin	↑
08-09-2007	Mail Final Rejection (PTOL - 326)	↑
08-06-2007	Final Rejection	
06-04-2007	Date Forwarded to Examiner	
05-24-2007	Response after Non-Final Action	92
05-24-2007	Request for Extension of Time - Granted	↑
10-02-2006	Miscellaneous Incoming Letter	↑
11-21-2006	Mail Notice of Withdrawn Action	↑
11-21-2006	Mail Non-Final Rejection	↑
11-13-2006	Non-Final Rejection	
11-13-2006	Letter Withdrawing / Vacating Office Action	
11-02-2006	Miscellaneous Incoming Letter	
11-13-2006	Case Docketed to Examiner in GAU	
09-24-2004	Information Disclosure Statement considered	
05-25-2005	Information Disclosure Statement considered	
07-12-2005	Information Disclosure Statement considered	
12-27-2005	Information Disclosure Statement considered	
03-06-2006	Information Disclosure Statement considered	
03-13-2006	Information Disclosure Statement considered	
05-19-2006	Information Disclosure Statement considered	
10-13-2006	Mail Restriction Requirement	
10-02-2006	Requirement for Restriction / Election	
07-26-2006	Date Forwarded to Examiner	
07-19-2006	Response to Election / Restriction Filed	
06-15-2006	Mail Restriction Requirement	519
06-12-2006	Requirement for Restriction / Election	↑
05-19-2006	Information Disclosure Statement (IDS) Filed	↑
05-19-2006	Information Disclosure Statement (IDS) Filed	↑
05-12-2006	Mail Miscellaneous Communication to Applicant	↑
05-11-2006	Miscellaneous Communication to Applicant - No Action Count	↑
05-03-2006	Miscellaneous Incoming Letter	↑
03-13-2006	Information Disclosure Statement (IDS) Filed	↑
03-13-2006	Information Disclosure Statement (IDS) Filed	↑
03-06-2006	Information Disclosure Statement (IDS) Filed	↑
03-06-2006	Information Disclosure Statement (IDS) Filed	↑
12-27-2005	Information Disclosure Statement (IDS) Filed	↑
12-27-2005	Information Disclosure Statement (IDS) Filed	↑
08-25-2005	Miscellaneous Incoming Letter	↑
07-12-2005	Information Disclosure Statement (IDS) Filed	↑

07-12-2005	Information Disclosure Statement (IDS) Filed	⬆
05-25-2005	Reference capture on IDS	⬆
05-25-2005	Information Disclosure Statement (IDS) Filed	⬆
05-25-2005	Information Disclosure Statement (IDS) Filed	⬆
05-12-2005	Miscellaneous Incoming Letter	⬆
02-07-2005	Miscellaneous Incoming Letter	⬆
09-24-2004	Information Disclosure Statement (IDS) Filed	⬆
09-24-2004	Information Disclosure Statement (IDS) Filed	⬆
08-16-2004	IFW TSS Processing by Tech Center Complete	⬆
05-20-2004	Preliminary Amendment	⬆
08-16-2004	Case Docketed to Examiner in GAU	⬆
06-01-2004	Application Return from OIPE	⬆
06-01-2004	Application Return TO OIPE	⬆
06-01-2004	Application Return from OIPE	⬆
06-01-2004	Application Is Now Complete	⬆
05-20-2004	Payment of additional filing fee/Preexam	⬆
11-12-2003	Claim Preliminary Amendment	⬆
06-01-2004	Pre-Exam Office Action Withdrawn	⬆
06-01-2004	Application Return TO OIPE	⬆
05-28-2004	Application Dispatched from OIPE	⬆
06-01-2004	Application Is Now Complete	⬆
05-20-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	⬆
03-17-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
02-10-2004	Cleared by L&R (LARS)	⬆
01-29-2004	Referred to Level 2 (LARS) by OIPE CSR	⬆
12-20-2003	IFW Scan & PACR Auto Security Review	⬆
12-03-2003	CRF Is Good Technically / Entered into Database	⬆
11-12-2003	CRF Disk Has Been Received by Preexam / Group / PCT	⬆
11-12-2003	Initial Exam Team nn	⬆

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